

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PHILIP GORDON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

BLUETRITON BRANDS, INC., (f/k/a
NESTLE WATERS NORTH AMERICA,
INC.),

Defendant.

22 CV 2138 (JMF)

DECLARATION OF PHILIP GORDON

I, Philip Gordon, under penalty of perjury, pursuant to 28 U.S.C. § 1746, affirm that the following is true and correct:

1. I was employed by Bluetriton Brands Inc. (formerly known as Nestle Waters North America Inc.) as a delivery driver from approximately September 2018 until June 2021.
2. From approximately September 2018 until June 2020, I was employed by BTB as a delivery driver called a “ReadyRefresh Service Representative” (“RSR”).
3. At this point in time, I was what BlueTriton Brands referred to as a “Level 1” driver and was driving a large truck while making deliveries for the company.
4. From June 2020 until I stopped working for BTB in June 2021, I continued working for Defendant as an RSR with the added title of “Delivery Service Driver” (“DSD RSR”).
5. During the time that I worked for BlueTriton Brands, I observed the operations of BlueTriton Brands facilities from which delivery drivers were dispatched and I had many conversations with my fellow BlueTriton Brands delivery drivers. I am fully familiar with the job duties and functions of the delivery drivers that worked for BlueTriton Brands.

6. BlueTriton Brands employs RSRs to deliver the company's merchandise to its customers.

7. All RSRs drive trucks to make their deliveries for BlueTriton Brands.

8. RSRs typically drive 8-bay or 10-bay trucks specifically designed for beverage delivery.

9. All of the BlueTriton's RSRs were primarily engaged in performing physical work.

10. In other words, as detailed below, these individuals spent the vast majority, if not the entirety, of their work shifts at BlueTriton Brands performing duties that involved manual labor.

11. Virtually all of my primary job duties at BlueTriton Brands consist of manual, physical tasks.

12. RSRs' primary job duties are driving trucks filled with merchandise, loading and unloading the trucks, and physically delivering the merchandise to customers.

13. All RSRs spend at least 90% of their work time engaged in these activities.

14. RSRs lift and carry an average of more than 300 product units per day, each weighing up to more than 50 pounds,

15. RSRs typically make between 30 and 50 delivery stops each day.

16. While I worked for Bluetriton Brands, I typically made between 40 and 50 delivery stops each workday.

17. While I worked as DSD for BlueTriton I had the same exact primary delivery duties as when I worked as a Level 1 RSR.

18. The only major difference was that when I worked as a DSD I was expected to try and make sales while was making my deliveries to customers.

19. All BlueTriton Brands delivery drivers have contact with the BlueTriton customers when they make deliveries.

20. The only difference between delivery drivers who BlueTriton provides the opportunity to make commissions and drivers who do not have the opportunity to make commissions is that, on the occasions that the drivers are interreacting with customers, the former also try and make sales on behalf of the company.

21. This sales component of commissioned drivers time only occurs when they are delivering merchandise from their trucks to BlueTriton Brands customers in person. Thus, the sales part of the job only takes up a fraction of their time during the workday.

22. All commissioned RSRs still performed driving, unloading and delivery duties for more than 90% of their workdays.

23. I am familiar with the payroll practices at BlueTriton Brands as well as the claims in this lawsuit.

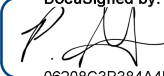
24. During the time I worked at BlueTriton Brands, I was paid on a bi-weekly basis.

25. I am prepared to act as a class representative in this action.

26. As a class representative, I am prepared to vigorously pursue the claims of my coworkers.

27. I do not have any conflicts of interest with any of the other employees who work or worked at BlueTriton Brands.

Dated: 10/7/2022 _____

DocuSigned by:

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Philip Gordon